

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel, Deputy Commissioner & General Counsel

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AUG 18 2020

Attention: General Counsel
Volkswagen Group of America, Inc.
2200 Ferdinand Porsche Drive
Herndon, VA 20171

Low Emission Vehicle Program Enforcement Discretion for Motor Vehicle Manufacturers Subject to 6 New York Codes Rules and Regulations Part 218

Dear General Counsel:

This is to advise you that in consideration of the Settlement Agreement between the California Air Resources Board (“CARB”) and Volkswagen Group of America, Inc. (“Settlement Agreement”), the New York State Department of Environmental Conservation is exercising its enforcement discretion to allow Volkswagen Group of America, Inc. to comply with the Settlement Agreement commitments. As of the effective date of the Settlement Agreement, the New York State Department of Environmental Conservation will exercise its discretion through Model Year 2026 to not enforce against Volkswagen Group of America, Inc. the fleetwide, light-duty motor vehicle greenhouse gas (“GHG”) emissions standards (“Vehicular GHG Emission Standards”) New York has adopted in 6 New York Codes Rules and Regulations Part 218 (“Enforcement Discretion”), provided that Volkswagen Group of America, Inc. meets the condition set forth in this Enforcement Discretion. The New York State Department of Environmental Conservation undertakes this Enforcement Discretion in reliance on the Volkswagen Group of America, Inc.’s commitments in the Settlement Agreement.

Background

CARB and Volkswagen Group of America, Inc. voluntarily entered into the Settlement Agreement based on a mutual interest in mitigating their respective risks and resolving potential legal disputes concerning the authority of CARB and the states that have adopted California’s motor vehicle emissions standards pursuant to Section 177 of the Clean Air Act, 42 U.S.C. § 7507 (“Section 177 States”) to adopt and enforce Vehicular GHG Emissions Standards for vehicles manufactured by Volkswagen Group of America, Inc. for Model Years 2021-2026 in light of the SAFE Rule Part One and Part Two, as set forth in the Settlement Agreement.

Ongoing and potentially lengthy litigation over the SAFE Rule Part One and Part Two leads to regulatory uncertainty and subjects Volkswagen Group of America, Inc. to considerable enforcement risk. Volkswagen Group of America, Inc. entered into the Settlement Agreement, recognizing that it offers Volkswagen Group of America, Inc. compliance flexibility and greater certainty to plan for its nationwide fleet.

The SAFE Rule Part One and Part Two, and the related litigation, also entail risks that CARB and the Section 177 States may not be able to enforce the Vehicular GHG Emissions Standards and thereby achieve their GHG reduction goals. The Settlement Agreement provides CARB and the Section 177 States, including New York, among other things, greater certainty regarding continuing automotive GHG emission reductions during Model Years 2021-2026.

CARB and the Section 177 States, including New York, have taken the position that they may enforce the Vehicular GHG Emissions Standards, including for periods for which EPA purported to revoke California's Clean Air Act waiver of federal preemption for its vehicular GHG emissions standards (and with them, New York's Vehicular GHG Emissions Standards), if the revoked portions of the waiver are reinstated and if the actions in the SAFE Rule Part One are vacated. The New York State Department of Environmental Conservation may exercise enforcement discretion with respect to such authority.

The New York State Department of Environmental Conservation has determined that the Volkswagen Group of America, Inc.'s Settlement Agreement commitments will result in GHG emissions reductions and will deliver environmental benefits that may not be realized in the absence of the Settlement Agreement.

Conditions of Enforcement Discretion

Volkswagen Group of America, Inc. must meet all the conditions of this Enforcement Discretion, as set forth below in order to be eligible for this Enforcement Discretion.

Volkswagen Group of America, Inc. must comply with all terms and conditions of the Settlement Agreement, including any modifications made in accordance with provisions of the Settlement Agreement.

Acknowledgements

In exercising this Enforcement Discretion, the New York State Department of Environmental Conservation acknowledges that Volkswagen Group of America, Inc.'s compliance with the Settlement Agreement will be enforced exclusively in accordance with the terms of the Settlement Agreement. As such, the New York State Department of Environmental Conservation acknowledges the enforcement, mitigation, dispute resolution, and Force Majeure mechanisms as implemented in accordance with the Settlement Agreement.

The New York State Department of Environmental Conservation further acknowledges the modification and termination terms as implemented in accordance with the Settlement Agreement.

The New York State Department of Environmental Conservation acknowledges that Volkswagen Group of America, Inc. is relying on the New York State Department of Environmental Conservation's exercise of its enforcement discretion, as described herein, as an important and material basis for the Volkswagen Group of America, Inc.'s decision to enter into the Settlement Agreement.

Reservation of Rights

Nothing in this Enforcement Discretion relieves Volkswagen Group of America, Inc.'s obligation to comply with all applicable portions of the New York State Department of Environmental Conservation's 6 New York Codes Rules and Regulations Part 218 other than the Vehicular GHG Emission Standards, including its Low Emission Vehicle Program requirements not addressed specifically by this Enforcement Discretion.

This document is not a regulation and does not constitute final agency action.

No Party other than Volkswagen Group of America, Inc. may rely on this Enforcement Discretion to create rights, duties, obligations or defenses, implied or otherwise, enforceable in any judicial or administrative proceeding with the New York State Department of Environmental Conservation. In addition, this Enforcement Discretion does not exempt any person from complying with the other requirements in 6 New York Codes Rules and Regulations Part 218 or any other applicable local, state or federal law.

If you have any questions concerning the conditions of this directive, please contact Colleen McCarthy at (518) 402-9203.

Sincerely,



Thomas S. Berkman
Deputy Commissioner
and General Counsel

c: Colleen McCarthy
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-1500